IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14289 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRISHKUMAR CHHOTALAL SHARMA - Petitioner(s)

Versus

ASHVINBHAI MOHANBHAI PATEL & 10 - Respondent(s)

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Appearance :

MR PM BHATT for Petitioner(s) : 1,
MR TRILOK J PATEL for Respondent(s) : 1,
MR.B H.MALEK for Respondent(s) : 1,
MR HM PARIKH for Respondent(s) : 2,
UNSERVED-REFUSED (N) for Respondent(s) : 3,
MS MONALI H BHATT for Respondent(s) : 4,
MR RM CHHAYA for Respondent(s) : 5 - 6.
NOTICE SERVED BY DS for Respondent(s) : 7 - 8, 11,
MR. DIPEN DESAI ASST. GOVERNMENT PLEADER for Respondent(s) : 9 - 10.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/10/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 14/15.6.2005 passed in Revision Application No.3/2002 in dismissing the same and confirming the order passed by the Collector, Kheda dated 28.5.2002.

2. The land bearing Survey Nos.181/1, 181/2, 181/3, 232/1, 232/2 and 233/1 total admeasuring 18212 sq. mtrs. of land was owned by Chimanlal Amratlal Patel and Jitendra Aditram Patel i.e. respondent Nos.2 and 3 herein. They have applied for Non-agricultural Use Permission from the Collector, Kheda as well as development permission from Kapadvanj Area Development Authority and also submitted the lay-out plan. As per the sanctioned lay-out plan while granting the Non-agricultural Use Permission as well as Development Permission they were required to put up the construction in 5339 sq. mts., of land and the rest of the land was required to be kept open. As per the sanctioned lay-out plan, there were in all 84 sub-plots and there was common plot. It appears that the respondent Nos.2 and 3 herein original land owners without submitting the revised plan and contrary to the sanctioned lay-out plan and Non-agricultural Use Permission, sub-plotted the common plot

into 4 plots i.e. D-85, D-86, D-87 and D-88 and sold the same to various persons by registered sale-deed. Those persons, who have purchased the said plots are also parties to the present proceedings as respondents and thereafter, the petitioner has purchased the said plots which are in the common plot. The respondent No.1 herein approached the Collector, Kheda making a grievance that the petitioner and the respondent Nos.2 and 3 herein have illegally sub-plotted in the common plot contrary to the sanctioned lay-out plan and the Non-agricultural Use Permission, and they have put up the construction illegally and unauthorizedly. The Collector, Kheda initiated the proceedings and after giving opportunity and hearing the petitioner as well as respondent Nos.2 and 3 passed the impugned order dated 28.5.2002 holding that the respondent Nos.2 and 3 have illegally sub-plotted the common plot into 4 plots being plot Nos. D-85, D-86, D-87 and D-88 which is contrary to the sanctioned plan and also contrary to the sanctioned lay-out plan while granting Non-agricultural Use Permission and therefore, declared the transaction for selling the said plots as illegal and directed to restore the position which was prevailing prior to the same as per the sanctioned lay-out plan and similarly, it also came to the knowledge that in plot Nos. D-57, D-60, and D-58

the construction is contrary to the sanctioned plan and therefore, the Collector, Kheda also passed order directing to remove the construction which is contrary to the sanctioned plan in plot Nos. D-57, D-58, D-59 and D-60. Being aggrieved and dissatisfied with the order passed by the Collector, Kheda dated 28.5.2002, the petitioner preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.3/2002 and in the said application third parties i.e. respondent Nos.5 to 8 herein submitted application for joining them as party respondents as they were the purchasers of the aforesaid plots i.e. D-85, D-86, D-87 and D-88 from the original land owners and from them the petitioner has purchased said plots and the said applications were allowed and they were also heard by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. The Principal Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 14/15.6.2005 dismissed the said Revision Application confirming the order passed by the Collector, Kheda dated 28.5.2002. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. It is required to be noted that initially the present Special Civil Application was filed by Shri P.M.Bhatt, learned advocate, and he was heard and thereafter, the matter was adjourned for whatever the reason. Shri Bhatt, learned advocate, submitted that now he is not appearing in the matter and the petitioner has taken back the papers from him and at his request, the matter was adjourned. The petitioner has appeared as party-in-person and has submitted that he was sick and therefore, again the matter was adjourned. Thus, the matter was adjourned time and again. Lastly, the matter was adjourned to 27.9.2005. Again on that day an attempt was made by the petitioner party-in-person to get the time, which was refused and the matter was adjourned to 5.10.2005. On that day, the petitioner submitted written submissions which are directed to be taken on record. Therefore, from the aforesaid, it appears that there was an attempt on the part of the petitioner and initially on the part of the learned advocate appearing on behalf of the petitioner for not to conduct the matter before this Court. After being argued the matter, during the course of argument he came to know that the Court is against him. Be that as it may on 5.10.2005, the petitioner party-in-person was heard at length. The sum and

substance of the petitioner is that the Collector has materially erred in initiating the proceedings at the instance of the respondent No.1 herein who has no locus in the plots in question and he has nothing to do with the plot Nos. D-85, D-86, D-87 and D-88 which the petitioner has purchased in the year 2001. He has also submitted that who has committed this cheating is not known and the report submitted by the Mamlatdar & ALT, dated 24.8.2001 upon which reliance has been placed is not given to the petitioner and therefore, the order is in breach of principle of natural justice. He has also further submitted that as subsequently the Nagarpalika has sanctioned the lay-out plan and granted development permission, the Collector has no jurisdiction to pass the impugned order and therefore, it is requested to allow the present Special Civil Application by quashing and setting aside the order passed by the Collector, Kheda as well as the order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. At last, he has submitted that he is the bona-fide purchaser and has purchased the said plots and therefore, it is requested to allow the present Special Civil Application.

4. On the other hand, Shri Trilok J. Patel, learned advocate appearing on behalf of the respondent No.1 as

well as Shri Dipen Desai, learned AGP appearing on behalf of the State Government as well as Collector, Kheda while supporting the order passed by the Collector, Kheda as well as the order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat has vehemently submitted that the petitioner has not come out with clean hands. It is also further submitted that as per the sanctioned lay-out plan, sanctioned by the Collector, Kheda while granting the Non-agricultural Use Permission there was a common plot which is required to be used by all the members of the society and it is of the ownership of the members of the society jointly and there was no revised plan submitted and in the common plot there was a further sub-plotting as plot Nos. D-85, D-86, D-87 and D-88 which are sold illegally to the petitioner and the petitioner has purchased the same and therefore, when the said sub-plotting was contrary to the sanctioned lay-out plan, the Collector, Kheda has rightly passed order which is rightly confirmed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat.

5. Heard the learned advocates appearing on behalf of the parties as well as the petitioner party-in-person.

6. I have also gone through the written submissions dated 4.10.2005 submitted by the petitioner party-in-person on 5.10.2005. It is required to be noted that the original land owners respondent Nos.2 and 3 herein applied for the Non-agricultural Use Permission with the Collector, Kheda and the Collector, Kheda granted the Non-agricultural Use Permission by its order dated 17.7.92 and as per the sanctioned lay-out plan, construction was to be put upon 5339 sq. mtrs., of land and rest of the land from the original holding of 18212 sq. mtrs., was required to be kept open. It also appears from the record that even the Dy. Town Planner, Nadiad also granted the development permission with the Raja Chithi accordingly and as per the same, sub-plotting was done and there was 84 plots. The land which was subsequently sub-plotted as plot Nos. D-85, D-86, D-87 and D-88 is shown as the common plot in the lay-out plan sanctioned by the Collector, Kheda as well as by the Dy. Town Planner, Nadiad and the common plot is required to be kept open and it is for the enjoyment of all the members of the society jointly. The respondent Nos.2 and 3 herein original land owners illegally and unauthorizedly sold the common plot to other persons from whom the petitioner has purchased without submitting any revised plan and not only that but the petitioner has put

up the construction even without any development permission and/or getting any permission from the competent authority. Considering the aforesaid fact, the Collector, Kheda, who has originally granted the Non-agricultural Use Permission and sanctioned the lay-out plan, has passed the impugned order and therefore, it cannot be said that there is any illegality committed by him. The petitioner ought to have verified the documents. It appears that knowing fully well the petitioner has purchased the aforesaid plots where was originally common plot in the sanctioned plan. Not only that but the petitioner is also not in a position to show anything that even for putting up the construction on the land of common plot i.e. bearing plot Nos. D-85, D-86, D-87 and D-88, he has obtained any permission after submitting the plan. In view of the fact that the respondent No.1 herein who has approached the Collector is the Chairman of the society and there was a common plot of the society which was sold and therefore, it cannot be said that the respondent No.1 herein has no locus to approach the Collector, Kheda.

7. So far as the contention on behalf of the petitioner party-in-person that the Collector, Kheda has no jurisdictional authority to pass such order in view of

the development permission granted by the Kapadvanj Nagarpalika and the appropriate authority is concerned, it is required to be noted that it is the Collector, Kheda who has granted the Non-agricultural Use Permission and sanctioned the lay-out plan and as per the sanctioned lay-out plan, the land in question where now plot Nos. D-85, D-86, D-87 and D-88 are there, was a common plot and therefore, it is his order of which breach is committed by the respondent Nos. 2 and 3 and the petitioner and therefore, it cannot be said that the Collector, Kheda has no jurisdiction. The petitioner is not in a position to satisfy this Court and also not in a position to dispute that so far as plot Nos. D-85, D-86, D-87 and D-88 are concerned, there was a common plot as per the sanctioned lay-out plan sanctioned by the Collector, Kheda while granting the Non-agricultural Use Permission as well as by the Dy. Town Planner. In above view of the matter, when the common plot is sold without getting the revised plan sanctioned illegally and unauthorizedly and upon which the petitioner has put up the construction unauthorizedly and illegally and when the impugned orders are passed it cannot be said that there is any illegality committed by any of the authorities below. On the contrary, both the authorities below are justified in passing the said orders and to restore the position of

the land as a common plot which is required to be used by all the members of the society jointly.

8. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith.

(M.R.SHAH, J.)

kdc.